




# South Carolina Department of Insurance

HENRY McMASTER  
Governor

RAYMOND G. FARMER  
Director

## BULLETIN NUMBER 2017-12

TO: All Insurers Licensed to Transact Accident and Health Insurance Business within the State of South Carolina and All South Carolina Licensed Health Maintenance Organizations (collectively "Health Insurance Issuers")

FROM: Raymond G. Farmer  
Director of Insurance 

SUBJECT: Repeal of Optional Intoxications and Narcotics Exclusion  
2017 S.C. Act No. 42 (Act No. 42)

DATE: September 29, 2017

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### I. PURPOSE

The purpose of this bulletin is to notify health insurance issuers of the recent enactment of S.C. Code Section 38-71-380, which prohibits the use of the optional intoxicants and narcotics exclusion found in S.C. Code Section 38-71-370(9) for medical expense policies. This Code Section has been added via 2017 S.C. Act No 42 (R. 63, S. 9), a copy of which is attached to this bulletin.

### II. SUMMARY OF LEGISLATIVE CHANGE

Section 38-71-380 defines a medical expense policy as *an accident and sickness insurance policy that provides hospital, medical, and surgical expense coverage*. Generally speaking, accident and sickness policies include a policy or contract of insurance that indemnifies a person against loss resulting from sickness or from bodily injury or death by accident or both (i.e., accident and sickness). The term *accident and sickness insurance policy* is often used interchangeably in the industry with the term *accident and health insurance policy*. Accordingly, Section 38-71-380 appears to prohibit the use of an alcohol and narcotics exclusion in individual *accident and health insurance policies* that provide *hospital<sup>1</sup>, medical and surgical expense<sup>2</sup> coverage*.

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<sup>1</sup> *Hospital expense coverage* is an insurance policy that provides coverage for the room and board and other basic expenses associated with a stay in the hospital (e.g., bloodwork, X-rays, CT scans, surgeries, etc.).

<sup>2</sup> *Surgical expense insurance* is a type of insurance policy that helps cover medical fees involving operations. It covers the surgeon's charge for given operations or medical procedures, usually up to a maximum for each type of operation.

### III. APPLICABILITY OF SECTION 38-71-380

The prohibition in Section 38-71-380 does not apply to all accident and health insurance policies. Section 38-71-380 was placed in Article 3 of Chapter 71 of the South Carolina Insurance Code, which applies specifically to individual health insurance policies. Therefore, the prohibition applies to *individual accident and health insurance policies, blanket accident and health insurance policies, and franchise accident and health insurance policies that provide hospital, medical and surgical expense coverage*. This includes, but is not limited to, individual major medical insurance, hospital confinement indemnity, basic hospital expense, basic medical surgical expense, fixed indemnity<sup>3</sup>, limited health benefit, student health insurance, and short term major medical insurance policies, etc., that provide *hospital, medical and surgical expense coverage*. Accordingly, such policies may no longer exclude or deny coverage for losses resulting from the insured being drunk or under the influence of any narcotic. Section 38-71-380 applies to such policies issued or renewed after December 31, 2017.

It does not apply to disability income protection insurance, long term care insurance, or workers' compensation insurance because these types of policies do not provide coverage for hospital, surgical and medical expenses or do not fall within the definition of an accident and health insurance policy. As such, they do not meet this section's definition of medical expense coverage.

### IV. PROCESS TO AMEND POLICY FORMS AND RATES; DEADLINE FOR SUBMISSION

Health insurance issuers currently utilizing this optional exclusion in applicable medical expense policies issued in the individual market must amend their policy forms to reflect this change in the law. Health insurance forms may be amended via submission of an amended policy form or endorsement submitted through the SERFF filing system. Rate changes, if any, must also be submitted via the SERFF system.

Given the effective date of Act No. 42, the Department requests that all requisite filings be submitted no later than November 1, 2017. Each filing should include a reference to the Act and this bulletin in the SERFF filing description. These will be reviewed under the applicable review standard per the South Carolina Law and Departmental bulletin. See [Bulletin 2003-13](#).

### V. QUESTIONS

Please direct any questions regarding this bulletin to [LAHmail@doi.sc.gov](mailto:LAHmail@doi.sc.gov) and include complete contact information (with company name, phone number and email address) for follow-up.

*Bulletins are the method by which the Director of Insurance formally communicates with persons and entities regulated by the Department. Bulletins are Departmental interpretations of South Carolina insurance laws and regulations and provide guidance on the Department's enforcement approach. Bulletins do not provide legal advice. Readers should consult applicable statutes and regulations or contact an attorney for legal advice or for additional information on the impact of that legislation on their specific situation.*

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<sup>3</sup> Fixed-indemnity policies may provide a set amount, such as \$500 a day for hospitalization or \$50 for a doctor visit, irrespective of the actual cost of services. These policies typically include a long list of specific medical procedures and assign a dollar amount to each. See Dana Shilling, L. Desk Book, *Section 3.07 Health Benefit Plans* Aspen Publishers (2017).

**South Carolina General Assembly**  
122nd Session, 2017-2018

**A42, R63, S9**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Hutto and Rankin

Document Path: I:\council\bill\ncd\11049cz17.docx

Introduced in the Senate on January 10, 2017

Introduced in the House on March 30, 2017

Last Amended on May 11, 2017

Passed by the General Assembly on May 11, 2017

Governor's Action: May 19, 2017, Signed

Summary: Medical expense policy

**HISTORY OF LEGISLATIVE ACTIONS**

Date	Body	Action Description with journal page number
12/13/2016	Senate	Prefiled
12/13/2016	Senate	Referred to Committee on <b>Banking and Insurance</b>
1/10/2017	Senate	Introduced and read first time ( <a href="#">Senate Journal-page 21</a> )
1/10/2017	Senate	Referred to Committee on <b>Banking and Insurance</b> ( <a href="#">Senate Journal-page 21</a> )
3/9/2017	Senate	Committee report: Favorable with amendment <b>Banking and Insurance</b> ( <a href="#">Senate Journal-page 14</a> )
3/23/2017	Senate	Committee Amendment Adopted ( <a href="#">Senate Journal-page 25</a> )
3/23/2017	Senate	Read second time ( <a href="#">Senate Journal-page 25</a> )
3/23/2017	Senate	Roll call Ayes-37 Nays-0 ( <a href="#">Senate Journal-page 25</a> )
3/29/2017	Senate	Read third time and sent to House ( <a href="#">Senate Journal-page 25</a> )
3/30/2017	House	Introduced and read first time ( <a href="#">House Journal-page 7</a> )
3/30/2017	House	Referred to Committee on <b>Labor, Commerce and Industry</b> ( <a href="#">House Journal-page 7</a> )
5/2/2017	House	Committee report: Favorable with amendment <b>Labor, Commerce and Industry</b> ( <a href="#">House Journal-page 5</a> )
5/4/2017	House	Amended ( <a href="#">House Journal-page 35</a> )
5/4/2017	House	Read second time ( <a href="#">House Journal-page 35</a> )
5/4/2017	House	Roll call Yeas-94 Nays-2 ( <a href="#">House Journal-page 39</a> )
5/4/2017	House	Unanimous consent for third reading on next legislative day ( <a href="#">House Journal-page 40</a> )
5/5/2017	House	Read third time and returned to Senate with amendments ( <a href="#">House Journal-page 4</a> )
5/11/2017	Senate	House amendment amended ( <a href="#">Senate Journal-page 145</a> )
5/11/2017	Senate	Roll call Ayes-31 Nays-0 ( <a href="#">Senate Journal-page 145</a> )
5/11/2017	Senate	Returned to House with amendments ( <a href="#">Senate Journal-page 145</a> )
5/11/2017	House	Concurred in Senate amendment and enrolled ( <a href="#">House Journal-page 24</a> )
5/11/2017	House	Roll call Yeas-92 Nays-0 ( <a href="#">House Journal-page 24</a> )
5/15/2017		Ratified R 63
5/19/2017		Signed By Governor
5/25/2017		Effective date 5/19/17
5/31/2017		Act No. 42

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## **VERSIONS OF THIS BILL**

[12/13/2016](#)

[3/9/2017](#)

[3/23/2017](#)

[5/2/2017](#)

[5/4/2017](#)

[5/11/2017](#)

**NOTE: THIS IS A TEMPORARY VERSION. THIS DOCUMENT WILL REMAIN IN THIS VERSION UNTIL FINAL APPROVAL BY THE LEGISLATIVE COUNCIL.**

(A42, R63, S9)

**AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 38-71-380 SO AS TO PROVIDE THAT THE OPTIONAL INTOXICANTS AND NARCOTICS EXCLUSION PROVISION CONTAINED IN CERTAIN INSURANCE POLICIES THAT REQUIRE THE REPLICATION OF EXACT LANGUAGE AS PROVIDED IN SECTION 38-71-370 DOES NOT APPLY TO A MEDICAL EXPENSE POLICY, AND TO DEFINE MEDICAL EXPENSE POLICY.**

Be it enacted by the General Assembly of the State of South Carolina:

**Medical expense policy, optional intoxicants and narcotics exclusion inapplicable**

SECTION 1. Subarticle 1, Article 3, Chapter 71, Title 38 of the 1976 Code is amended by adding:

“Section 38-71-380. (A) For purposes of this section, ‘medical expense policy’ means an accident and sickness insurance policy that provides hospital, medical, and surgical expense coverage.

(B) The provisions of Section 38-71-370(9) may not be used with respect to a medical expense policy.

(C) This section applies to policies issued or renewed after December 31, 2017.”

**Time effective**

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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